

### PROJECT FUNDING REQUEST

BOARD DATE: January 31, 2013 PRESENTED BY: Dain Larsen

APPLICANT	Coastal Water Authority			
TYPE OF ASSISTANCE	\$28,754,000 Loan			
LEGAL PLEDGE	Contract Revenues			

#### STAFF RECOMMENDATION

X Approve	No Action	□ Loan Committee Concurrence
		Ecan committee concarrence

#### **ACTION REQUESTED**

Consider approving by resolution: (a) a request from the **Coastal Water Authority (Harris County)** for financial assistance in the amount of \$28,754,000 from the State Participation program to finance water system improvements, utilizing the pre-design funding option (the Luce Bayou Interbasin Transfer Project); and (b) authorizing the Executive Administrator to negotiate and execute a Master Agreement between TWDB and Coastal Water Authority Regarding State Participation in the Luce Bayou Interbasin Transfer Project.

#### **PROJECT**

Luce Bayou Interbasin Transfer Project Number 21606

#### FINANCIAL SUMMARY

Risk Score:	2B
Pledge for Repayment:	Contract revenues
Proposed Repayment Method:	Contract revenues
Average Monthly Water and Wastewater Bill:	\$60.03
Assessed Value Trend:	Increasing
Operating Trends:	Increasing
Population:	Increasing
Median Household Income:	Increasing

COMMITMENT PERIOD: TWO (2) YEARS TO EXPIRE ON JANUARY 31, 2015

#### FINANCIAL

#### Key Issues

Coastal Water Authority (Authority) is a conservation and reclamation district that primarily transports and delivers water to the City of Houston (City). The Authority delivers approximately 75% of the water used by the City.

#### Pledge and Repayment

The applicant is pledging contract revenues for repayment of the debt.

The Authority's contract payments from the City are accounted for as an operating expense of the City's utility system. These payments are based on the actual operating expenses of the Authority and the annual debt service requirements of the Authority. In 2011, the Authority received \$24.43 million in payments from the City. The Authority's debt service payments were \$5.10 million in 2011, and will be \$5.15 million in 2012. Including the proposed debt service, the Authority's maximum debt service will be \$17.04 million in 2028. This is a \$11.89 million increase over 16 years.

While the City is the contractee with the Authority, the City subcontracts with four (4) regional water authorities representing over three-hundred (300) water districts and municipalities in the northern and western regions of the City and northern region of Fort Bend County to deliver surface water in response to requirements of the Harris-Galveston Co. Subsidence District.

The City's water and wastewater system rates adjust annually based on a calculation that considers the change in the regional consumer price index and annual population growth. The automatic adjustments have resulted in an average annual increase of water rates of 6.28% since 2007. Wastewater rates have increased similarly.

Staff analysis is based on a current estimated State Participation interest rate schedule and a 35-year maturity schedule.

#### Internal Risk Score

Staff assigns a risk score of 2B. This means that the applicant's repayment capacity is adequate.

The City's population has increased at an average annual rate of .860% since 2000, compared to the State overall with an average annual population increase of 1.91% during the same period. The City's median household income was \$42,877 in 2011, and is approximately 87% of the median for the State overall. In November 2012 the unemployment rate in the City was 5.9% compared to 5.8% in the State overall.

The primary urban areas in Fort Bend County served by the project; City of Sugar Land, City of Missouri City and City of Stafford, together grew at an average annual rate of 1.87% from 2000 to 2011. The City of Sugar Land has the highest median household income at \$103,365, which is over twice the median for the State. The City of Stafford has the lowest at \$61,083, which is 125% of the State overall. The November 2012 unemployment rate in the City of Sugar Land was 4.2%, and was 5.7% in the City of Missouri City.

The Authority has unrestricted net assets of \$47.7 million. This amount represents 690 days of operating expenses. The Authority's per capita debt level (based on the population of the City) is \$53, and would increase to \$67 with the proposed debt.

The City overall has a per capita debt amount of \$5,706. Of this amount, \$4,494 is paid for with revenues other than ad valorem taxes. The remaining \$1,212 of debt is paid from ad valorem taxes. The per capita debt attributable to the City's utility system is \$2,703. The City's total assessed valuation on a per capita basis is \$66,100, and has increased at an average annual rate of 4.13% since 2007. The City's average annual water and sewer bill (\$60.03 per month) represents 1.68% of the median household income, which is below the 2% benchmark for assessing the affordability of rates.

The Authority's financial condition is characterized by a low debt level, substantial liquidity evidenced by their level of unrestricted net assets, and a stable contractual relationship with the City. The City itself has a level of debt similar to its peers, the other five largest cities in the State. Most of the City's debt does not have a pledge of ad valorem taxes. Broad indicators of the City's economic condition show moderate and improving income and tax bases, evidenced by the median household income and per capita assessed valuation.

#### **LEGAL**

Key Issues

#### Master Agreement

Financial assistance will be provided under a Master Agreement, which sets out the responsibilities, duties and liabilities of the Authority and the Board. Under the Master Agreement, the TWDB will purchase a percentage of the Project, based on the amount of TWDB State Participation funds provided as compared to the total amount of funds spent on the Project. The Authority obligates itself to purchase the TWDB's interest in the Project under a Payment Schedule attached to the Master Agreement, which provides that the Authority will make payments of principal and interest.

Security and Source of Funds for the Authority's Purchase of TWDB's Interest in Project Under the Master Agreement, the Authority pledges a parity lien on Contract Revenues that are also pledged to the payment of two series of bonds that were sold to the TWDB for two Water Infrastructure Fund loans to the Authority for the Project. The Authority has amended its contract with the City of Houston to provide the parity Contract Revenue pledge. Under the Master Agreement, the Authority must maintain and enforce its contract in order to collect sufficient revenues to pay all of the parity obligations.

#### **State Participation Findings**

Before the TWDB may acquire a facility or interest in a facility, pursuant to the Texas Water Code §§ 16.135 and 16.136, the Board must make the findings listed below. Based on the application, TWDB staff has determined that the Project involved in this funding meets all the findings.

1. It is reasonable to expect that the state will recover its investment in the project.

The Master Agreement requires the Authority to repurchase the TWDB's interest in the project. As outlined under the Financial Section of this Project Funding Request, the Authority's repayment capacity is expected to be adequate.

2. The cost of the project exceeds the current financing capabilities of the area involved, and the optimum regional development of the project cannot be reasonably financed by local interest without state participation.

The Project is oversized to meet the projected needs of the region, so the Project cost exceeds the current financing capabilities of the area. As indicated in the Financial Section above, the City of Houston's water and wastewater system rates adjust annually based on a calculation that considers the change in the regional consumer price index and annual population growth, so the Authority's repayment capacity is based partly on future revenues rather than the current financing capabilities of the area involved.

3. The public interest will be served by the acquisition of an interest in the project.

The Luce Bayou Inter-basin Transfer Project is a vital part of a water use strategy for the metro Houston area that is recommended in the State Water Plan. The Harris Galveston Subsidence District (District) has mandated water utilities in Harris, Galveston, Fort Bend, and Montgomery Counties and the San Jacinto River Authority to reduce their reliance on ground water by 70% by the year 2020 and 80% by 2030.

4. The project contemplates the optimum regional development which is reasonably required under all existing circumstances of the site.

The project will transfer existing surface water rights held by the City of Houston in the Trinity River to Lake Houston. Upon transfer to Lake Houston, the City's water will be available for treatment and transport to the various utilities, including four (4) regional water authorities representing over three-hundred (300) water districts and municipalities in the northern and western regions of the City and northern region of Fort Bend County. Treatment and transport services will be provided by other projects that are currently being designed or constructed.

5. That the political subdivisions are willing and reasonably able to finance that portion of the cost of the project that the TWDB does not acquire.

The Authority has already funded \$33,115,000 of the Project with Water Infrastructure Fund loans, and this \$28,754,000 State Participation will bring the total TWDB funding to \$61,869,000. The Authority expects to fund the remaining \$251,934,660 with future TWDB funding (the projected total project cost of the Project is \$351,286,591). As indicated in the Financial Section, the Authority is willing and reasonably able to finance the remainder of the Project.

6. That the project is consistent with the state water plan and regional water plan.

The Project is in the State Water Plan and Region H Water Plan.

7. All necessary permits have been obtained.

The City of Houston owns the water that will be transported by the Project, under Water Use Permit No. 5826, and Certificate of Adjudication 08-4621. The Authority is responsible for obtaining all permits needed for each phase of the Project.

8. That the applicant in the State Participation project has adopted and implemented a program of water conservation for a more efficient use of water.

The Authority has provided the City of Houston's approved water conservation plan that the City is implementing. The Authority is not required to submit its own water conservation plan, but may meet this requirement through its contractual relations with the City of Houston, under Texas Water Code §16.136(4) and §15.106(e), and 31 Texas Administrative Code §363.15(d)(1).

#### **CONDITIONS**

Standard tax-exempt, contract revenue conditions, and further conditioned as follows:

- Pre-design funding; and
- Water rights certification.

Attachments: 1. Project Data Summary

- 2. Debt Service
- 3. Engineering/Environmental Review
- 4. Project Budget
- 5. Resolution (13- ) and Master Agreement with attachments
- 6. Water Conservation Review
- 7. Location Map

**Project Data Summary** 

Project Data Summary	
Applicant	Coastal Water Authority
Program	SP
Commitment Number	L1000087
Project Number	21606
IUP Year	N/A
Fund Number	341
Type of Pledge	Contract Revenues
Revenue Pledge Level	First
Name of Security	\$28,754,000 Master Agreement
Tax-exempt or Taxable	Tax-exempt
Years of Maturities	35
AMT	No
Outlay Required	No
Installment or Escrow	Escrow
Outlay for Release (1:1)	No
Population	2,145,933
Water Connections	371,345 (City of Houston)
Wastewater Connections	370,279 (City of Houston)
SRF- Qualifies as Disadvantaged	N/A
SRF- Disadvantaged Level	9
Green Project Reserve Amount	\$0
Non-Equivalency (Tier II – CWSRF)	N/A
Equivalency (Tier III – CWSRF)	N/A
FMT Complete	N/A
Phase Committing	DC
Pre-Design	Yes
Is water available for the life of the loan?	Yes
Project Consistent with Water Plan	Yes
Water Conservation Plan	Adopted
Water Rights Certification Required	Yes
Internal Risk Score	2B
External Ratings (for SRF rates)	
Standard and Poor's	Non-Rated
Moody's	Non-Rated
Fitch	Non-Rated
Special Issues	None

# Project Team

Project Oversight	Darrell Nichols
Financial Analyst	Dain Larsen
Engineering Reviewer	Joel Smith
Environmental Reviewer	Jennifer Kennedy
Attorney	Michelle McFaddin

#### ISSUE BEING EVALUATED Coastal Water Authority \$28,754,000 Master Loan Agreement

 Dated Date
 03/01/13

 Delivery Date
 03/01/13

 First Interest
 06/15/13

 First Principal
 12/15/32

 Last Principal
 12/15/46

 Fiscal Year End
 9/30

Source: State Participation Rate: 4.52%

Rate: 4.52% Insurance: No

Case: Contract Revenues

#### RATES ARE FOR ILLUSTRATION PURPOSES ONLY AND ARE SUBJECT TO CHANGE

	PROJECTED	CURRENT		THIS \$28,754	4,000 ISSUE		TOTAL	COVERAGE	
FISCAL	NET SYSTEM	DEBT	PRINCIPAL	INTEREST	INTEREST	TOTAL	DEBT	BEING	ACTUAL
YEAR	REVENUES	SERVICE	PAYMENT	RATE	PAYMENT	PAYMENT	SERVICE	REQUIRED	COVERAGE
2013	5,148,885	5,148,925	-			-	5,148,925	1.00	1.00
2014	5,148,885	5,142,565	-			-	5,142,565	1.00	1.00
2015	7,085,316	5,648,265	-		266,950	266,950	5,915,215	1.00	1.20
2016	7,085,316	6,637,905	-		266,950	266,950	6,904,855	1.00	1.03
2017	7,085,316	6,638,825	-		400,426	400,426	7,039,251	1.00	1.01
2018	7,085,316	6,634,200	-		400,426	400,426	7,034,626	1.00	1.01
2019	7,608,675	6,635,750	-		533,902	533,902	7,169,652	1.00	1.06
2020	7,608,675	6,664,650	-		734,114	734,114	7,398,764	1.00	1.03
2021	7,608,675	6,634,400	-		934,326	934,326	7,568,726	1.00	1.01
2022	11,062,848	9,784,203	-		1,234,646	1,234,646	11,018,849	1.00	1.00
2023	12,528,255	10,439,250	-		2,080,730	2,080,730	12,519,980	1.00	1.00
2024	12,528,255	10,406,028	-		2,080,730	2,080,730	12,486,758	1.00	1.00
2025	12,528,255	10,404,170	-		2,080,730	2,080,730	12,484,900	1.00	1.00
2026	12,528,255	10,403,616	-		2,080,730	2,080,730	12,484,346	1.00	1.00
2027	12,528,255	10,397,963	-		2,080,730	2,080,730	12,478,693	1.00	1.00
2028	17,081,484	14,961,927	-		2,080,730	2,080,730	17,042,657	1.00	1.00
2029	17,081,484	7,381,993	-		2,080,730	2,080,730	9,462,723	1.00	1.81
2030	17,081,484	7,383,371	-		2,080,730	2,080,730	9,464,101	1.00	1.80
2031	17,081,484	7,384,497	-		2,080,730	2,080,730	9,465,227	1.00	1.80
2032	17,081,484	4,149,864	-		2,080,730	2,080,730	6,230,594	1.00	2.74
2033	17,081,484	4,145,295	1,375,000	4.54%	1,304,227	2,679,227	6,824,522	1.00	2.50
2034	17,081,484	3,611,800	1,435,000	4.54%	1,241,128	2,676,128	6,287,928	1.00	2.72
2035	17,081,484	3,609,300	1,500,000	4.59%	1,174,129	2,674,129	6,283,429	1.00	2.72
2036	17,081,484	3,610,150	1,570,000	4.59%	1,103,672	2,673,672	6,283,822	1.00	2.72
2037	17,081,484	3,613,875	1,640,000	4.59%	1,030,002	2,670,002	6,283,877	1.00	2.72
2038	17,081,484	-	1,715,000	4.59%	953,005	2,668,005	2,668,005	1.00	6.40
2039	17,081,484	-	1,795,000	4.59%	872,451	2,667,451	2,667,451	1.00	6.40
2040	17,081,484	-	1,875,000	4.59%	787,287	2,662,287	2,662,287	1.00	6.42
2041	17,081,484	-	1,965,000	4.69%	697,239	2,662,239	2,662,239	1.00	6.42
2042	17,081,484	-	2,055,000	4.69%	602,970	2,657,970	2,657,970	1.00	6.43
2043	17,081,484	-	2,155,000	4.69%	504,245	2,659,245	2,659,245	1.00	6.42
2044	17,081,484	-	2,255,000	4.69%	400,831	2,655,831	2,655,831	1.00	6.43
2045	17,081,484	-	2,360,000	4.69%	292,610	2,652,610	2,652,610	1.00	6.44
2046	17,081,484	-	2,470,000	4.69%	179,346	2,649,346	2,649,346	1.00	6.45
2047	17,081,484	-	2,589,000	4.69%	60,712	2,649,712	2,649,712	1.00	6.45
	=	\$ 177,472,787	28,754,000		\$ 36,782,894	\$ 65,536,894 \$	243,009,681		

AVERAGE (MATURITY) LIFE	27.61 YEARS
NET INTEREST RATE	4.52%
AVERAGE ANNUAL REQUIREMENT	\$6,943,134

#### **Coastal Water Authority**

#### **Engineering and Environmental Review**

#### **Engineering:**

#### **Key Issues**

The Luce Bayou Inter-basin Transfer Project is a vital part of a water use strategy for the metro Houston area that is recommended in the State Water Plan.

The Authority needs to acquire additional funding to completely fund the entire project. The Authority intends to apply for State Participation funding from the TWDB to complete the project, when these funds becomes available.

#### Project Need / Description

#### Need:

The Harris Galveston Subsidence District (District) has mandated water utilities in Harris, Galveston, Fort Bend, and Montgomery Counties and the San Jacinto River Authority to reduce their reliance on ground water by 70% by the year 2020 and 80% by 2030.

#### **Project Description:**

To meet the surface water demand for the area, Coastal Water Authority (Authority) will plan, design, and construct the Luce Bayou Interbasin Transfer Project. The project will transfer existing surface water rights held by the City of Houston (City) in the Trinity River to Lake Houston. The project consists of three components: a pump station with a capacity of 230 million gallons per day (MGD), approximately 3 miles of twin, 108-inch force main, and approximately 18 miles of clay-lined open canal. Upon transfer to Lake Houston, the City's 450,000 acre-feet per year of Trinity River water will be available for treatment and transport to the various utilities. Treatment and transport services will be provided by other projects that are currently being designed or constructed.

#### **Project Schedule**

Project Task	<b>Schedule Date</b>
Closing	3/1/2013
Engineering Feasibility Report Completion (End of Planning Phase)	3/30/2013
Star of Construction	1/15/2016
Completion of Design	5/16/2016
Complete Construction	7/1/2019

There are three contracts to complete the project scope in the Schedule. These include: Contract 01 - the Caper's Ridge Pump Station; Contract 02 - the Canal/Force Mains; and Contract 03 - the Electrical Service. Note that the construction of the first contract will begin before design work of the overall project is completed.

#### **Environmental:**

#### **Key Issues**

None known at this time.

#### **Coastal Water Authority**

#### **Engineering and Environmental Review**

#### **Environmental Summary**

As set forth in the preliminary environmental information submitted by the applicant, there are no known environmental, social, or permitting issues that would preclude construction of the proposed project. Based on this initial environmental review, it is not anticipated that the proposed project's primary environmental impacts should be significant or adverse, nor should they affect project implementation or the alternatives considered.

Pursuant to the environmental requirements of 31 Texas Administrative Code (TAC) §363.16 of the Texas Water Development Board Rules, all financial assistance for the project shall be conditioned to read that funding for design and construction costs for specific project elements would not be released until an environmental review of those elements has been completed and a favorable environmental determination has been issued by the Executive Administrator.

# Coastal Water Authority 21606 - Luce Bayou Interbasin Transfer

	Previous	This	TWDB	TWDB	Local &	
Budget Items	Commitments		Funds	Funding %		Total Cost
Construction						
Construction	\$0	\$21,282,000	\$21,282,000		\$233,822,000	\$255,104,000
Construction Total	\$0	\$21,282,000	\$21,282,000	34.4%	\$233,822,000	\$255,104,000
Basic Engineering Services						
Construction Engineering	\$0	\$1,905,000	\$1,905,000		\$34,052,788	\$35,957,788
Design	\$13,000,000	\$5,000,000	\$18,000,000		\$0	\$18,000,000
Planning	\$6,339,461	\$0	\$6,339,461		\$0	\$6,339,461
Basic Engineering Services Total	\$19,339,461	\$6,905,000	\$26,244,461	42.4%	\$34,052,788	\$60,297,249
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Special Services	<b>*</b> 4 02 5 220	40	<b>#4.025.220</b>		40	<b>04.025.220</b>
Environmental	\$4,925,330		\$4,925,330		\$0	\$4,925,330
Geotechnical	\$255,805	\$0	\$255,805		\$0	\$255,805
Special Service Other (Describe) -	¢500,000	60	<b>\$500,000</b>		60	¢500,000
Environmental Mitigation	\$500,000	\$0	\$500,000		\$0	\$500,000
Special Service Other (describe) -						
Environmental/ROW Legal	\$2.500.000	¢o.	£2 500 000		¢0	\$2.500,000
Services	\$2,500,000	\$0 \$0	\$2,500,000		\$0 \$0	
Surveying Water Conservation Plan	\$1,116,165 \$75,200	\$0 \$0	\$1,116,165 \$75,200		\$0 \$0	. , ,
Special Services Total	\$9,372,500	\$0 <b>\$0</b>	\$9,372,500	15.1%	\$0 <b>\$0</b>	
Special Services Total	\$9,372,300	<b>50</b>	\$9,372,300	15.170	\$0	\$9,572,500
Contingency						
Contingency	\$1,000,981	\$424,000	\$1,424,981		\$1,200,000	\$2,624,981
Contingency Total	\$1,000,981	\$424,000	\$1,424,981	2.3%	\$1,200,000	\$2,624,981
Other						
Administration	\$1,267,804	\$0	\$1,267,804		\$0	\$1,267,804
Land/Easements Acquisition	\$0	\$0 \$0			\$19,500,000	
Other (Describe) - Financial	\$0	Ψ0	ΨΟ		Ψ19,500,000	\$17,500,000
Analysis	\$211,254	\$0	\$211,254		\$0	\$211,254
Other (Describe) - ROW;	Ψ211,231	ΨΟ	Ψ211,231		ΨΟ	Ψ211,231
Appraisal/Negotiation Services	\$1,500,000	\$0	\$1,500,000		\$500,000	\$2,000,000
Other Total	\$2,979,058	<b>\$0</b>	\$2,979,058	4.8%	\$20,000,000	\$22,979,058
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Fiscal Services						
Bond Counsel	\$200,000	\$78,000	\$278,000		\$100,000	\$378,000
Financial Advisor	\$198,000	\$65,000	\$263,000		\$80,000	\$343,000
Issuance Costs	\$25,000	\$0	\$25,000		\$162,803	\$187,803
Fiscal Services Total	\$423,000	\$143,000	\$566,000	0.9%	\$342,803	\$908,803
Grand Total	\$33,115,000	\$28 754 000	\$61,869,000	100 00%	\$289,417,591	\$351 286 501
Grand Iviai	\$55,115,000	\$20,734,000	\$01,007,000	100.0 /0	Φ207,417,391	\$331,200,391

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD APPROVING AN APPLICATION FILED BY COASTAL WATER AUTHORITY FOR THE TEXAS WATER DEVELOPMENT BOARD'S ACQUISITION AND SALE OF AN INTEREST IN THE LUCE BAYOU INTERBASIN TRANSFER PROJECT WITH FUNDS FROM THE STATE PARTICIPATION ACCOUNT OF THE TEXAS WATER DEVELOPMENT FUND II

(13 - )

WHEREAS, the Texas Water Development Board (the "TWDB"), under the authority of Chapter 16, Subchapters E and F of the Texas Water Code, is authorized to use the State Participation Account of the Texas Water Development Fund II to encourage optimum regional development of projects through the acquisition of an interest in new water supply project facilities and the sale, transfer, or lease of its interest in those facilities; and

WHEREAS, pursuant to 31 Tex. Admin. Code ("TAC") § 363.1003 (relating to Board Participation), the TWDB may only use the State Participation Account of the Texas Water Development Fund II to provide financial assistance for all or a part of the cost to construct the excess capacity of an eligible new water supply or water plan project where at least 20% of the total facility capacity of the proposed project will service existing needs, or the applicant will finance at least 20% of the total project cost from sources other than the State Participation Account; and

WHEREAS, Coastal Water Authority, (the "Authority"), has filed an application with the TWDB requesting that TWDB acquire an interest in the Luce Bayou Interbasin Transfer Project, TWDB Project No. 21606, (the "Project"), in an amount not to exceed \$28,754,000 under this commitment in order to enable the construction of excess capacity for the optimum regional development of the Project using the State Participation Account of the Texas Water Development Fund II; and

WHEREAS, the total project cost is projected to be \$351,300,000, of which the TWDB's share, pursuant to this commitment, will not exceed \$28,754,000; and

WHEREAS, the Authority will purchase the TWDB's interest in the Project with the proceeds of a future revenue bond issue, from other revenue, or from other lawful sources of funds in accordance with a Master Agreement to be executed by and between the Authority and the TWDB; and

WHEREAS, the Authority has offered a pledge of contract revenues as sufficient security for its obligation to purchase the TWDB's interest in the Project; and

WHEREAS, the TWDB has considered the long-term needs of the area, the costs of the Project, and the feasibility of the Project; and

WHEREAS, the Project will aid in addressing the long-term needs of the City of Houston; and

WHEREAS, pursuant to 31 TAC § 363.1009, the TWDB requires the execution of a Master Agreement that will set forth the responsibilities, duties and liabilities of each party in a State Participation project; and

WHEREAS, the terms of the TWDB's ownership interest in the Project have been incorporated into a proposed Master Agreement that sets forth the responsibilities, duties and liabilities of each party and that is attached hereto as Attachment "B"; and

WHEREAS, TWDB staff seeks the Board's approval of the terms of the proposed Master Agreement and consent to the execution of a Master Agreement with substantially similar terms; and

WHEREAS, in accordance with §§ 16.053, 16.131, 16.135, 16.1351, and 16.136, Texas Water Code, the TWDB finds that:

- 1. it is reasonable to expect that the State will recover its investment in the Project because the Authority has a foreseeable need for the excess capacity in the Project that is owned by the TWDB and the revenue to be generated by the Project will be sufficient to purchase the excess capacity owned by the TWDB, in accordance with § 16.135(1), Texas Water Code; and
- 2. the cost of the Project exceeds the current financing capabilities of the area involved and the optimum regional development cannot be reasonably financed by local interests without state participation, in accordance with § 16.135(2), Texas Water Code; and
- 3. the public interest will be served by the TWDB's acquisition of an interest in the Project, in accordance with § 16.135(3), Texas Water Code; and
- 4. the Project contemplates the optimum regional development which is reasonably required under all of existing circumstances of the site, in accordance with § 16.135(4), Texas Water Code; and
- 5. the Authority is willing and reasonably able to finance that portion of the cost of the Project that the TWDB does not acquire, in accordance with § 16.136(1), Texas Water Code; and
- 6. the Authority has obtained all necessary permits required for this phase of the Project, in accordance with § 16.136(2), Texas Water Code; and
- 7. the TWDB has approved a regional water plan for the region of the state that includes the area benefiting from the Project and the needs to be addressed by the Project will be addressed in a manner that is consistent with the approved regional and state water plans, in accordance with § 16.136(3), Texas Water Code; and
- 8. the Authority will adopt a resolution affirming that it will cooperate and coordinate with the City of Houston to implement a water conservation program that will result in the more efficient use of water, that will meet reasonably anticipated local needs and conditions and that will incorporate those practices, techniques or technologies prescribed by the Texas Water Code and TWDB's rules; and

- 9. the Authority has satisfactorily completed all requests by the Executive Administrator or a regional planning group for information relevant to the project, including a water infrastructure financing survey under § 16.053(q), Texas Water Code, in accordance with § 16.131(b), Texas Water Code; and
- 10. the TWDB has approved a regional water plan for the region of the state that includes the area benefiting from the project and the needs to be addressed by the project will be addressed in a manner that is consistent with the state and regional water plans, as required by § 16.053(j), Texas Water Code.

WHEREAS, in accordance with § 16.190, Texas Water Code, the TWDB hereby finds as follows:

- 1. the Authority has all applicable permits that need to be granted by the Texas Commission on Environmental Quality in order to implement the Project in accordance with § 16.190(1), Texas Water Code;
- 2. the sale of the TWDB's ownership interest in the Project to the Authority will contribute to the conservation and development of the water resources of the state, in accordance with § 16.190(2), Texas Water Code; and
- 3. the consideration for the sale of the TWDB's ownership interest in the Project under the methodology specified in §§ 16.186, 16.187, and 16.190, Texas Water Code, as applicable, and as exemplified by the Schedule(s) attached hereto as Attachment A, is fair, just and reasonable and in full compliance with the law, in accordance with § 16.190(3), Texas Water Code.

NOW THEREFORE, based on these considerations and findings, the Texas Water Development Board resolves as follows:

- 1. a commitment is made by the TWDB to acquire and sell an ownership interest in the Luce Bayou Interbasin Transfer Project in an amount not to exceed \$28,754,000 based on an application filed by Coastal Water Authority seeking funding from the State Participation Account of the Texas Water Development Fund II. This commitment will expire on January 31, 2015; and
- 2. the Board approves the terms of the Master Agreement attached to this Resolution as Attachment B; and
- 3. the Executive Administrator is authorized to negotiate and execute a Master Agreement with the Authority that will set forth the responsibilities, duties and liabilities of each party, with substantially similar terms as the Master Agreement attached to this Resolution as Attachment B.

This commitment is conditioned as follows:

1. this commitment is contingent on a future sale of bonds by the TWDB or on the availability of funds on hand;

- 2. this commitment is contingent upon issuance of a written approving opinion of the Attorney General of the State of Texas confirming the legality of the Master Agreement and any other contract(s) relating to the TWDB's participation in the Project;
- 3. this commitment is contingent upon the Authority's compliance with all applicable requirements contained in applicable statutes and rules of the TWDB;
- 4. prior to closing, the Authority will provide an attorney's opinion that is satisfactory and acceptable to the TWDB's Executive Administrator as to any impact of the Project on the tax-exempt status of any bonds issued by the TWDB to fund its acquisition of an interest in the Project;
- 5. the Authority agrees to take such actions as are necessary to assure, or to refrain from such actions as would materially adversely affect, the excludability from gross income for Federal income tax purposes of interest payable on such obligations as are issued by the TWDB to finance its acquisition of an interest in the Project;
- 6. prior to the TWDB's release of funds, the Authority and the TWDB will execute a Master Agreement which will set forth the responsibilities, duties and liabilities of each party;
- 7. the Master Agreement must contain a provision that the pledged revenues from the Authority may not be pledged to the payment of any additional obligations of the Authority unless the Authority demonstrates to the Executive Administrator's satisfaction that the pledged revenues will be sufficient for the payment of the Authority's obligation to purchase the TWDB's interest in the Project and the additional obligations;
- 8. TWDB funds shall not be used by the Authority to sample, test, remove, or dispose of contaminated soils and/or media that may be present at or around the Project site or any sites upon which related facilities are located; nor shall TWDB funds be used, either directly or indirectly, to acquire property or to remediate property(s) that contains known, hazardous wastes and hazardous substances. The Master Agreement shall include an environmental indemnification provision wherein the Authority agrees to indemnify, hold harmless and protect the TWDB from any and all claims, causes of action or damages, however and whenever arising, to the person or property of third parties caused either directly or indirectly by the sampling, analysis, transport, storage, treatment, recycling and disposal of any contaminated soil, surface water, groundwater and contaminated media that may be generated or encountered by the Authority, its contractors, consultants, agents, officials and employees as a result of design and construction activities undertaken to complete the Project;
- 9. the TWDB's Executive Administrator may require that the Authority execute a separate financing agreement in form and substance acceptable to the Executive Administrator; and
- 10. should one or more of the provisions in this resolution be held to be null, void, voidable or, for any reason whatsoever, of no force and effect, such provision(s) shall be construed as severable from the remainder of this resolution and shall not affect the validity of all other provisions of this resolution which shall remain in full force and effect.

#### Pledge Conditions

- 11. upon request by the Executive Administrator, the Authority shall submit annual audits of contracting parties for the Executive Administrator's review;
- 12. the Obligations must contain a provision requiring the Authority to maintain and enforce the terms and conditions set forth in the Project Contract executed by and between the Authority and the City of Houston so that revenues paid to the Authority by the City are sufficient to meet the revenue requirements of the Authority's obligation to purchase the TWDB's interest in the Project that are being supported by the pledged Contract Revenues;
- 13. the Obligations must contain a provision that the pledged contract revenues from the Authority may not be pledged to the payment of any additional parity obligations of the Authority secured by a pledge of the same contract revenues unless the Authority demonstrates to the Executive Administrator's satisfaction that the pledged contract revenues will be sufficient for the repayment of all Obligations and additional parity obligations; and
- 14. prior to closing, the Authority must submit executed contracts between the Authority and the contracting parties regarding the contract revenues pledged to the payment of the Authority's Obligations, in form and substance acceptable to the Executive Administrator. Such contracts shall include provisions consistent with the provisions of this Resolution regarding the contracting parties' annual audits, the setting of rates and charges and collection of revenues sufficient to meet the Authority's debt service obligations and additional parity obligations.
  - PROVIDED, HOWEVER, the commitment is subject to the following special conditions:
- 15. the loan is approved for funding under the TWDB's pre-design funding option, as specified in 31 TAC § 363.16, and initial and future releases of funds are subject to all rules of the TWDB relating to such funding option;
- 16. the Master Agreement must contain a provision requiring that, upon request by the Executive Administrator, the Authority submit annual audits of contracting parties for the Executive Administrator's review; and
- 17. the Master Agreement must contain a provision requiring the Authority to maintain and enforce the terms and conditions set forth in the Project Contract executed by and between the Authority and the City of Houston so that revenues paid to the Authority by the City are sufficient to meet the revenue requirements of the Authority's obligation to purchase the TWDB's interest in the Project that are being supported by the pledged Contract Revenues.

# APPROVED and ordered of record this the 31st day of January, 2013.

# TEXAS WATER DEVELOPMENT BOARD

	Billy R. Bradford, Jr., Chairman
ATTEST:	
Melanie Callahan Executive Administrator	

#### **Coastal Water Authority** Schedule 1

Par: \$ 28,754,000

03/01/2023

8/31

15

Call Date:

# of Periods:

3/1/2013 Dated: 3/1/2013 Delivery: 6/15/2013 1st Interest: 1st Principal: 12/15/2032 Last Principal: 12/15/2046

<u>Deferred Interest</u>

Total Deferred Repayment Periods Repayment Pd. Start Repayment Pd. End 12/15/2031

\$7,459,784 7 6/15/2025

Yearly Deferred Int Payment: \$1,065,683 Semi-Annual: \$532,842

#### Semi-Annual **Loan Debt Service**

				Loan					
FY	Dates	Principal	Rates	Interest	Deferral %	Deferral	Repayment	Adjusted Interest	Total
2013	6/15/2013			\$385,595	100%	(\$385,595)			
2014	12/15/2013			667,376	100%	(667,376)			
2014	6/15/2014			667,376	100%	(667,376)			
2015	12/15/2014			667,376	100%	(667,376)			
2015	6/15/2015			667,376	80%	(533,901)		133,475	133,4
2016	12/15/2015			667,376	80%	(533,901)		133,475	133,4
2016	6/15/2016			667,376	80%	(533,901)		133,475	133,4
2017	12/15/2016			667,376	80%	(533,901)		133,475	133,4
2017	6/15/2017			667,376	70%	(467,163)		200,213	200,2
2018	12/15/2017			667,376	70%	(467,163)		200,213	200,2
2018	6/15/2018			667,376	60%	(400,426)		266,951	266,9
2019	12/15/2018			667,376	60%	(400,426)		266,951	266,9
2019	6/15/2019			667,376	45%	(300,319)		367,057	367,0
2020	12/15/2019			667,376	45%	(300,319)		367,057	367,0
2020	6/15/2020			667,376	30%	(200,213)		467,163	467,
2021	12/15/2020			667,376	30%	(200,213)		467,163	467,
2021	6/15/2021			667,376	15%	(100,106)		567,270	567,2
2022	12/15/2021			667,376	15%	(100,106)		567,270	567,2
					1370	(100,100)			
2022	6/15/2022			667,376				667,376	667,
2023	12/15/2022			667,376				667,376	667,
2023	6/15/2023			667,376				667,376	667,
2024	12/15/2023			667,376				667,376	667,
2024	6/15/2024			667,376				667,376	667,
2025	12/15/2024			667,376			E00.0:0	667,376	667,
2025	6/15/2025			667,376			532,842	1,200,218	1,200,
2026	12/15/2025			667,376			532,842	1,200,218	1,200,
2026	6/15/2026			667,376			532,842	1,200,218	1,200,
2027	12/15/2026			667,376			532,842	1,200,218	1,200,
2027	6/15/2027			667,376			532,842	1,200,218	1,200,
2028	12/15/2027			667,376			532,842	1,200,218	1,200,
2028	6/15/2028			667,376			532,842	1,200,218	1,200,
2029	12/15/2028			667,376			532,842	1,200,218	1,200,
2029	6/15/2029			667,376			532,842	1,200,218	1,200,
2030	12/15/2029			667,376			532,842	1,200,218	
									1,200,
2030	6/15/2030			667,376			532,842	1,200,218	1,200,
2031	12/15/2030			667,376			532,842	1,200,218	1,200,
2031	6/15/2031			667,376			532,842	1,200,218	1,200,
2032	12/15/2031			667,376			532,842	1,200,218	1,200,
2032	6/15/2032			667,376			-	667,376	667,
2033	12/15/2032	1,375,000	4.440%	667,376			-	667,376	2,042,
2033	6/15/2033			636,851			-	636,851	636,
2034	12/15/2033	1,435,000	4.540%	636,851			_	636,851	2,071,
2034	6/15/2034	,		604,277			_	604,277	604,
2035	12/15/2034	1 500 000	4 5000/	604,277				604,277	2,104,
		1,500,000	4.590%				-		
2035	6/15/2035			569,852			-	569,852	569,
2036	12/15/2035	1,570,000	4.590%	569,852			-	569,852	2,139,
2036	6/15/2036			533,820			-	533,820	533,
2037	12/15/2036	1,640,000	4 590%	533,820			_	533,820	2,173,
		1,040,000	7.55070				-		
2037	6/15/2037			496,182			-	496,182	496,
2038	12/15/2037	1,715,000	4.590%	496,182			-	496,182	2,211,
2038	6/15/2038			456,823			-	456,823	456,
2039	12/15/2038	1,795,000	4.590%	456,823			_	456,823	2,251,
2039	6/15/2039	.,. 50,000		415,628			_	415,628	415,
		1 075 000	4.6000/				-		
2040	12/15/2039	1,875,000	4.090%	415,628			-	415,628	2,290,
2040	6/15/2040			371,659			-	371,659	371,
2041	12/15/2040	1,965,000	4.690%	371,659			-	371,659	2,336,
2041	6/15/2041			325,580			_	325,580	325,
2041	12/15/2041	2,055,000	4 690%	325,580			=	325,580	2,380,
		2,000,000	7.030 /0				-		
2042	6/15/2042			277,390			-	277,390	277,
2043	12/15/2042	2,155,000	4.690%	277,390			-	277,390	2,432,
2043	6/15/2043			226,855			-	226,855	226,
2044	12/15/2043	2.255.000	4.690%	226,855			_	226,855	2,481,
	6/15/2044	2,200,000	7.00070				=		
2044		0.000.000	4.00001	173,976			-	173,976	173,
2045	12/15/2044	2,360,000	4.690%	173,976			-	173,976	2,533,
2045	6/15/2045			118,634			-	118,634	118,
2046	12/15/2045	2,470,000	4.690%	118,634			-	118,634	2,588,
2046	6/15/2046	,,		60,712			_	60,712	60,
		2 500 000	4 6000/				-		
2047	12/15/2046	2,589,000	4.09U%	60,712			-	60,712	2,649,
2047	6/15/2047			-			-	-	
2048	12/15/2047			-			-	-	
2048	6/15/2048			-			_	_	

# MASTER AGREEMENT BETWEEN TEXAS WATER DEVELOPMENT BOARD AND COASTAL WATER AUTHORITY

REGARDING STATE PARTICIPATION IN THE LUCE BAYOU INTERBASIN TRANSFER PROJECT PROJECT NO. 21606

### TABLE OF CONTENTS

		Page
ARTICLE	E 1. DEFINITIONS AND CONSTRUCTION	2
	DEFINITIONS	
§1.2	TITLES AND HEADINGS	
ARTICLE	E 2. TWDB OWNERSHIP	5
§2.1	TWDB ACQUISITION OF OWNERSHIP	5
§2.2	ESCROW ACCOUNT AND CONSTRUCTION FUND	5
§2.3	DELIVERY OF TWDB FUNDS	5
A.	SITE ACQUISITION STAGE	6
	DESIGN STAGE	
C.	CONSTRUCTION STAGE	
§2.4	VESTING AND NATURE OF TWDB OWNERSHIP	
§2.5	CALCULATION OF TWDB OWNERSHIP	7
§2.6	TAX-EXEMPT ASSURANCES	7
ARTICLE	E 3. AUTHORITY'S PURCHASE OBLIGATION	8
§3.1	PURCHASE BY AUTHORITY	8
§3.2	PLEDGE BY AUTHORITY	8
§3.3	PRICE OF SALE	8
§3.4	SCHEDULE OF PAYMENTS	9
§3.5	EARLY PURCHASE	9
§3.6	LEASE OR PURCHASE UPON USE OF TWDB OWNERSHIP	
A.	DETERMINATION OF AUTHORITY USE OF TWDB OWNERSHIP	9
B.	METHOD OF AUTHORITY'S LEASE OR PURCHASE OF TWDB INTERES	T10
C.	PROVISIONS RELATING TO PURCHASE USING REVENUE BONDS AS	
	CONSIDERATION	10
D.	LEASE PAYMENTS	11
§3.7	PROJECT SITE REVENUES	11
§3.8	PREFERENTIAL RIGHT TO PURCHASE	11
§3.9	PURCHASE AND LEASE SCHEDULES	
A.	PURCHASES-SCHEDULES	11
B.	LEASES	12
C.		12
ARTICLE	E 4. PROCEDURES DURING CONSTRUCTION	12
§4.1	PROJECT SCHEDULE	
§4.2	AUTHORITY RESPONSIBILITIES	
§4.3	SUPERVISION OF CONSTRUCTION	
§4.4	TWDB INSPECTION	
§4.5	REPORTS TO BE PROVIDED	
ARTICLE	E 5. OPERATION AND MAINTENANCE	
§5.1	OPERATION AND MAINTENANCE	12
§5.2	INDEMNIFICATION	
	GENERAL INDEMNIFICATION	
	ENVIRONMENTAL INDEMNIFICATION	
§5.3	INSURANCE	
§5.4	BUDGETS, AUDITS AND REPORTS	
§5.5	RECORDS RETENTION	
85.6	TWDB OPERATION AND MAINTENANCE	14

# TABLE OF CONTENTS

		Page
ARTICLE 6. SALE AND LEASE OF PROPERTY		14
§6.1	DISPOSAL AND ENCUMBRANCE OF PROJECT	
§6.2	LEASE OF Authority PROPERTY	14
§6.3	TWDB APPROVAL OF SALES AND LEASES	
§6.4	SALE OF CERTAIN ITEMS	15
ARTICLE 7. EFFECTIVE DATE AND TERM OF AGREEMENT		
§7.1	EFFECTIVE DATE	15
§7.2	TERM	15
ARTICLE 8. FURTHER COVENANTS		15
§8.1	NOTICES	15
§8.2	PROJECT EXPANSION	15
§8.3	TITLE COVENANTS	15
§8.4	PLEDGE COVENANTS	16
ARTICLE	E 9. LAWS GOVERNING THIS AGREEMENT	16
§9.1	RULES AND APPLICATIONS INCORPORATED IN AGREEMENT	16
§9.2	APPLICABLE LAW	16
§9.3	REMEDIES	16
§9.4	VENUE	16
§9.5	AMENDMENT	16
§9.6	SEVERABILITY	17
§9.7	ENTIRE AGREEMENT	17
§9.8	ARBITRATION	17
§9.9	FORCE MAJEURE	17
§9.10	SECURITY INTEREST IN CONTRACT REVENUES.	17

# MASTER AGREEMENT BETWEEN TEXAS WATER DEVELOPMENT BOARD AND COASTAL WATER AUTHORITY

WHEREAS, the Texas Water Development Board, (the "TWDB"), a Texas agency created pursuant to Article 3, Section 49-c of the Texas Constitution, is authorized under the authority of Texas Water Code §§ 16.131, 16.1311, 16.181, and 17.957, to acquire, sell, transfer, and lease an interest in water supply projects using the State Participation Account of the Texas Water Development Fund II in order to encourage the optimum regional development of reservoirs and facilities for the transmission of water; and

WHEREAS, Coastal Water Authority (the "Authority"), a conservation and reclamation District duly created pursuant to Article XVI, Section 59 of the Texas Constitution and lawfully operating under the Authority Act, is proposing to develop a new water transmission project known as the Luce Bayou Interbasin Transfer Project, Project No. 21606; and

WHEREAS, the Project will consist of the planning, design, acquisition and construction of a raw water conveyance system to transfer water from the Trinity River in Liberty County to tributaries of Lake Houston in the San Jacinto River Basin in northeastern Harris County; and

WHEREAS, the TWDB has determined that the amount of surface water to be transferred from the Trinity River Basin to the San Jacinto River Basin contemplated by the Project will not be needed to supply the reasonably foreseeable future water requirements for the Trinity River Basin during the next 50 years; and

WHEREAS, the Project is a recommended water management strategy in the 2012 State Water Plan and in the 2012 Region "H" Regional Water Plan; and

WHEREAS, in accordance with Texas Water Code § 16.133, the water to be transported by the Project will be water available to the City of Houston, Texas (the "City") under TCEQ Certificate of Adjudication 08-4261, as amended;

WHEREAS, at its meeting on January 31, 2013, the TWDB, through adoption of TWDB Resolution No. << TWDB RESOLUTION NO. >> (the "TWDB Resolution"), approved the Authority's application for the TWDB's participation in the Project in an amount up to \$28,754,000 from the State Participation Account of the Texas Water Development Fund II; and

WHEREAS, under 31 Texas Administrative Code § 363.1003, the Authority will finance at least 20% of the Project and the TWDB may finance up to 80% of the Project; and

WHEREAS, the Authority will purchase the TWDB's interest with the proceeds of a future bond issue, with other revenue, or with other lawful sources of funds in accordance with a Master Agreement to be executed by and between the Authority and the TWDB; and

WHEREAS, in the TWDB Resolution, the TWDB authorized the Executive Administrator to

negotiate and execute a Master Agreement setting forth the duties, responsibilities and liabilities of the TWDB and the Authority; and

WHEREAS, this Master Agreement has been negotiated pursuant to the authority delegated to the Executive Administrator in the TWDB Resolution and is approved in substantially this form by the TWDB under the TWDB Resolution, subject to final terms approved by the Executive Administrator and is hereby entered into and executed between the TWDB and the Authority to authorize the TWDB's acquisition of an ownership interest in the Project and the subsequent purchase of the TWDB's ownership interest in such Project by the Authority.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement, and in contemplation of and in accordance with the applicable laws of the State of Texas, the Authority, acting by and through its undersigned representatives as duly authorized by a resolution of its Board of Directors, and the TWDB, acting herein by and through its undersigned representative, as duly authorized by the TWDB Resolution, enter into this Agreement and mutually agree as follows:

#### **ARTICLE 1. DEFINITIONS AND CONSTRUCTION**

- **§1.1 DEFINITIONS**. Words and phrases as used in this Agreement shall have the following meanings:
- (1) "Additional Obligations" means additional debt or other obligations for which the Authority pledges a parity lien on the same Contract Revenues as pledged herein.
- (2) "Agreement" means this Master Agreement.
- (3) "Application" means the Authority's application to the TWDB for State Participation funds for TWDB Project No. 21606, together with all attachments and any amendments thereto.
- (4) "Authority" means the Coastal Water Authority or its successors or assigns which succeed it as to any rights, powers or duties under this Agreement.
- (5) "Authority Act" means Article 16, Section 59 of the Texas Constitution; and Chapter 601, Acts of the 60<sup>th</sup> Legislature of Texas, Regular Session, 1967, as amended.
- (6) "Call Date" means the date prior to which the Authority cannot purchase the TWDB's portion of the Project, as set forth in the Schedules.
- (7) "City" means the City of Houston, Texas.
- (8) "Code" means the Internal Revenue Code of 1986, as amended.
- (9) "Construction Fund" means a separate account created under § 2.2 of this Agreement and maintained at the depository bank of the Authority for the purpose of paying and accounting for Project Costs, and into which any funds may be transferred either directly from the TWDB or from the Escrow Account pursuant to approval by the Executive Administrator. Funds in the Construction Fund may be used only for Project Costs or for the Authority's purchase of the TWDB's interest in the Project.

- (10) "Construction Stage" means that stage of the Project that involves the physical construction of the Project, including raw water intake pump station, electrical service, transmission mains, sedimentation basins, open channel canal, maintenance facility, siphons, drainage works, access roads and canal crossings, related appurtenances, and related engineering and inspection fees.
- "Contract Revenue Bonds" means all bonds, notes, or other obligations of the Authority whether now outstanding or hereafter issued, payable from and secured by a lien on and pledge of the Authority's Contract Revenues that are pledged to the payment of the Authority's Contract Revenue Bonds (Luce Bayou Project), Series 2009 and Contract Revenue Bonds (Luce Bayou Project), Series 2010, issued to the TWDB under its Water Infrastructure Fund ("WIF") loan program.
- "Contract Revenues" means those "Pledged Revenues" as defined in the Projects Contract, which are pledged on a parity basis to the payment of the Authority's outstanding Contract Revenue Bonds, and which are pledged to the payment of the Authority's obligation to purchase the TWDB's interest in the Project, as provided in Section 3.2 herein. The definition of "Pledged Revenues" in the Projects Contract means "Net Revenues held in the General Purpose Fund." "Net Revenues" is defined in the City's Ordinance No. 2004-299 (the "Master Ordinance"), which is "(i) all Gross Revenues remaining after deducting Maintenance and Operation Expenses, plus (ii) any Restricted Receipts deposited to the Revenue Fund that may be used to pay Debt Service Requirements on Obligations." The General Purpose Fund is established and maintained under the Master Ordinance.
- (13) "Cost of Acquisition" means the amount of funds deposited into the Construction Fund and/or the Escrow Account by the TWDB for the acquisition of an undivided interest in the Project.
- (14) "Date of Acquisition" means each date that TWDB delivers funds to the Construction Fund and/or the Escrow Account for the acquisition of an undivided interest in the Project.
- (15) "Design Stage" means that stage of the Project that involves the design of the Project.
- (16) "Escrow" means the TWDB's transfer of funds to a third-party custodian until such funds are authorized for release to the Authority by the Executive Administrator.
- (17) "Escrow Account" means the account created under this Agreement for the TWDB's delivery of funds to be held in Escrow upon closing for the TWDB's acquisition of an undivided interest in the Project. Funds in the Escrow Account may be used only for Project Costs or for the Authority's purchase of the TWDB's interest in the Project.
- (18) "Escrow Agent" means the third party appointed to hold the escrow funds which have not been authorized for release to the Authority.
- (19) "Event of Default" means the non-performance or violation by the Authority of any obligation or provision in this Agreement if such non-performance or violation is not cured within 30 days after written notice by the TWDB to the Authority of the non-performance or violation.

- (20) "Executive Administrator" means the Executive Administrator of the TWDB.
- (21) "Parity Lien on the Contract Revenues" means a lien on the Contract Revenues on parity with the revenues pledged by the Authority to the payment of the Contract Revenue Bonds, such lien being the security interest pledged by the Authority to secure its obligations hereunder, including its obligation to purchase the TWDB's interest in the Project under the terms of this Agreement.
- (22) "Project" means the planning, design and construction of a raw water conveyance system to transfer water from the Trinity River in Liberty County to tributaries of Lake Houston in the San Jacinto River Basin in northeastern Harris County, as described in the Application. "Project" does not include any of the water rights owned by the City.
- (23) "Project Costs" means costs of the Project associated with its construction, bond issuance costs, and all other costs and expenditures which under standard principles of accounting would constitute a capital cost of the Project, including specifically but not limited to: the cost of engineering design, supervision and inspection; the cost of testing laboratories and other professional services associated with construction of the Project; abstractors' costs; the cost of constructing the Project infrastructure; the cost of acquiring all lands and interests in land for the Project, including all costs associated with the planning, design, and construction of the Project. The term "Project Costs" does not include any capitalized interest, reserve funds or operational expenses.
- (24) "Projects Contract" means that certain "Projects Contract Between the City of Houston, Texas and Coastal Water Authority," as amended by the "First Supplement to Project Contract Between City of Houston, Texas, and the Coastal Water Authority," in form and substance acceptable to the TWDB.
- "Schedule(s)" means the payment schedule(s) attached hereto from time to time, which show the payments that the Authority is obligated to make in order to purchase the TWDB's interest in the Project. Each Schedule is associated with the funds delivered by TWDB upon each Date of Acquisition. Such Schedules shall, at a minimum, detail the interest rate to be paid by the Authority, the TWDB's source of funds, and the Call Date associated with the Authority's purchase obligation.
- (26) "State" means the State of Texas.
- (27) "TAC" means Texas Administrative Code.
- (28) "TCEQ" means the Texas Commission on Environmental Quality or any other board, commission or agency which succeeds it as to any rights, powers or duties under this Agreement.
- (29) "TWDB" means Texas Water Development Board or any other board, commission or agency which succeeds it as to any rights, powers or duties under this Agreement.

- (30) "TWDB Cost of Acquisition" means the total of the payments made by TWDB to the Authority for purchase of an undivided interest in the Project pursuant to this Agreement, less any purchases of TWDB's interest by the Authority.
- (31) "TWDB Resolution" means TWDB Resolution No. << TWDB RESOLUTION NO.>>, adopted at the TWDB's meeting of January 31, 2013.
- (32) "TWDB Rules" means the applicable rules and regulations of the TWDB set forth in 31 TAC Part 10.
- (33) "Water Permit" means the Water Use Permit No. 5826, and Certificate of Adjudication 08-4261, as amended, issued to the City of Houston by the TCEQ.
- **§1.2 TITLES AND HEADINGS**. The titles and headings of the articles and sections of this Agreement have been inserted for convenience of reference only and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions contained in this Agreement.

#### **ARTICLE 2. STATE PARTICIPATION**

- **§2.1 TWDB ACQUISITION OF OWNERSHIP**. The TWDB will participate in this Project by acquiring an undivided interest in the Project as a whole, including all work performed and all properties and facilities acquired or constructed as part of the Project, for the Cost of Acquisition, pursuant to the TWDB Resolution and this Agreement. The TWDB's undivided ownership interest in the Project will cost no more than \$28,754,000, to be allocated for the costs of the Design Stage and the Construction Stage in any manner determined to be acceptable by the Executive Administrator, in accordance with the provisions of this Agreement. The TWDB may consider providing additional funds if requested by the Authority in writing, and if additional funds are provided by the TWDB under the State Participation Program, then the TWDB and the Authority will amend this Master Agreement to evidence the increased Cost of Acquisition, the change in percentage of ownership, and to provide additional Schedules to reflect the Authority's obligation to purchase the TWDB increased ownership interest.
- **§2.2 ESCROW ACCOUNT AND CONSTRUCTION FUND**. Prior to the delivery of TWDB funds, the Authority will create (1) a Construction Fund, to be held by the Authority, and (2) an Escrow Account under an escrow agreement approved by the Executive Administrator, to be held by the Escrow Agent. Funds in the Escrow Account and Construction Fund, including interest and investment earnings, are to be used only for Project Costs or for the Authority's purchase of the TWDB's interest in the Project. Funds in the Escrow Account may be released by the Escrow Agent only upon direction by the Executive Administrator or his or her designee.

The funds to be placed in the Construction Fund and the Escrow Account are public funds and, as such, these funds shall be held at a designated state depository institution or other properly chartered and authorized institution and managed in accordance with the Public Funds Investment Act, Chapter 2256, Government Code (the "PFIA"), and the Public Funds Collateral Act, Chapter 2257, Government Code (the "PFCA").

§2.3 DELIVERY OF TWDB FUNDS. Subject to the availability of funds and satisfactory

documentation that the Authority has met all prerequisites for the delivery of TWDB funds under this Agreement, Texas Water Code, Chapter 16, Subchapters E and F, the TWDB's rules, and the TWDB Resolution authorizing TWDB participation in the Project, the TWDB shall provide funds in an amount not to exceed \$28,754,000. The Executive Administrator shall determine the amounts to be delivered to the Construction Fund and/or the Escrow Account as appropriate. The Executive Administrator, or his or her designee, shall authorize release of funds from the Escrow Account to the Construction Fund for the Design Stage and Construction Stage, as provided below, after the Authority has provided information, satisfactory to the Executive Administrator, that the funds are needed for eligible Project Costs. Upon each Date of Acquisition, Schedules shall be dated and signed by the Executive Administrator and by a duly authorized representative of the Authority to indicate agreement, and such agreed Schedules shall be appended to and incorporated into this Agreement.

- A. **DESIGN STAGE**: After completion of all prerequisites for the release of funds for work to be performed for the Design Stage satisfactory to the Executive Administrator, including, but not limited to those in 31 TAC Chapter 363, the Executive Administrator shall either deliver to the Construction Fund or authorize the release of funds from the Escrow Account to the Construction Fund for the costs associated with the Design Stage. Prior to the initial delivery of funds to the Construction Fund for the Design Stage, the Executive Administrator must make a favorable environmental determination relating to the Project.
- B. CONSTRUCTION STAGE: After the Design Stage releases have been completed, and after completion of all prerequisites to the release of funds for construction activities, including, but not limited to those in 31 TAC Chapter 363, the Executive Administrator shall either deliver to the Construction Fund or authorize the release from the Escrow Account to the Construction Fund of an amount up to the remainder of funds available under this Agreement for the costs associated with the Construction Stage. Prior to the initial delivery of funds to the Construction Fund for the Construction Stage, the Executive Administrator must make a favorable environmental determination relating to the Project.
- **§2.4 VESTING AND NATURE OF TWDB OWNERSHIP**. Upon delivery of funds in any amount by the TWDB into the Construction Fund and/or the Escrow Account, there will be vested in the TWDB an undivided ownership interest in the Project along with the right to its use, as well as an undivided ownership right in all applicable operating permits with respect to the Project. The percentage of the TWDB's undivided ownership interest in the Project is initially set at 35% and shall remain at 35% until additional funding is provided under § 2.1 and this Master Agreement is amended or supplemented; or until all Stages of the Project are complete and a final accounting is performed under § 2.5 of this Agreement; or upon a determination by the TWDB that the Project will not be completed, and a final accounting is performed under § 2.5 of this Agreement.

It is expressly understood that the TWDB is purchasing an undivided interest, to the extent permitted by law, in the entire Project, including real estate purchased for site acquisition, facilities constructed for the Project infrastructure, and all related appurtenances and any structures of the Project. TWDB's ownership interest in the Project does not provide the TWDB with any ownership right in the City's Water Permit. The TWDB's undivided interest in the Project shall include, but not be limited to, the right to operate the Project to the extent of the TWDB's undivided interest, subject to the Authority's

preferential right to purchase the TWDB's interest under § 3.8 of this Agreement. The Authority, upon request of the TWDB, will execute and record any conveyances and assignments which may be necessary to place title of the Project in the TWDB, with the exception that the Authority shall hold title to any land and facilities that are part of the Project in trust for the TWDB to the extent of the TWDB's interest in the Project. Upon written request of the TWDB, the Authority shall execute and record documents necessary to convey or assign title to the Project land and facilities to the extent of the TWDB's ownership interest in the Project. The Authority acknowledges that the TWDB's interest shall constitute an ownership interest regardless of whether the TWDB ever requires execution of any conveyance documents to evidence such interest.

**§2.5 CALCULATION OF TWDB OWNERSHIP INTEREST**. The Authority shall provide TWDB a final accounting of all Project Costs within six (6) months of completion of all Stages of the Project and the issuance of a certificate of approval under 31 TAC § 363.55, or upon a determination by the TWDB that the Project will not be completed. Upon the TWDB's approval of the final accounting, the TWDB's total undivided ownership interest in the Project shall be calculated by dividing the TWDB Cost of Acquisition by the Project Costs incurred on the Project to that point in time. If, at the time that the TWDB approves the final accounting, the calculation of the TWDB's ownership interest exceeds 80%, the Authority shall, within 30 days after the TWDB's approval of the final accounting, take all actions necessary to remit to the TWDB the amount necessary to reduce the TWDB's ownership interest to 80%. The TWDB shall have the right to determine the schedule and method by which the funds are remitted to the TWDB. Upon remittance, any Schedule and any lease payment schedule calculated pursuant to the terms of this Agreement shall be amended to reflect the remitted amount.

Upon the TWDB's approval of the final accounting and any actions taken to adjust the parties' ownership interest, the TWDB shall then own that percentage interest in the Project, not to exceed 80%, and the Authority shall own the remainder, not less than 20%. Such ownership interests shall be documented in writing in Attachment C as agreed by both parties and made part of this Agreement for all purposes. The parties agree that, once completed, the Project will have a weighted average capacity of 396,350 acre-feet per year (354 MGD), based on the capacity of each component of the Project. Each party's ownership interest in the Project shall be reflected in Attachment C in acre-feet per year based on a percentage of the weighted average capacity.

The use of each party's ownership in the Project shall be determined annually thereafter, based on the amount of water transported by the Project, in accordance with § 3.6 of this Agreement.

#### **§2.6** TAX-EXEMPT ASSURANCES.

A. The TWDB has identified the source of funds for its share of the cost of the Project as the proceeds of tax-exempt obligations issued by the TWDB. As required by the TWDB Resolution, the Authority has provided a bond counsel opinion that is satisfactory and acceptable to the Executive Administrator as to any adverse effect of the Project, or the use thereof and the Authority's payments under this Agreement (Attachment A) on the excludability of interest on obligations issued by the TWDB to fund their undivided interest in the Project from gross income of the owners of such obligations for federal income tax purposes. The Authority agrees to take such actions, including the execution and delivery of such certificates and agreements, as are necessary to assure, or to refrain from such actions as would materially adversely affect such excludability from gross income, including, but not limited to: (1) the filing of a Form 8038-G in connection with

- the execution of this Agreement by the Authority in connection with the financing of the Authority's interest in the Project; and (2) the adoption of written procedures relating to arbitrage compliance, private business use and record retention.
- B. At each Date of Acquisition, the Authority must submit a bond counsel opinion that is satisfactory and acceptable to the Executive Administrator as to any adverse impact of the Project, or the use thereof, and the Authority's payments under this Agreement on the tax-exempt status of TWDB bonds.
- C. To the extent that the TWDB and the Authority use proceeds from tax-exempt obligations to finance all or a portion of their respective interests in the Project, the TWDB and the Authority hereby agree that the proceeds of their respective tax-exempt obligations will not be used in a manner that will cause the obligations to be "private activity bonds" or arbitrage bonds." In furtherance thereof, the Authority agrees to make timely payments of arbitrage rebate to the United States required to be made by section 148 of the Code.

#### **ARTICLE 3. AUTHORITY'S PURCHASE OBLIGATION**

**§3.1 PURCHASE BY AUTHORITY**. The Authority will purchase the TWDB's ownership interest in the Project at the earliest possible date, which date shall be not later than the date(s) established by the Schedule(s), so that the State may fully recover its investment therein.

#### **§3.2** PLEDGE BY AUTHORITY.

- A. In order to secure its obligations hereunder, including the ultimate purchase by the Authority of 100% of the TWDB's ownership interest in the Project, under the authority of the Authority Act, Texas Water Code § 49.108, and other applicable law, the Authority pledges and grants to the TWDB as security for the payments hereunder, a Parity Lien on the Contract Revenues in such amounts as may be necessary, when and as required by this Agreement, and the Schedules incorporated herein, to purchase the TWDB's ownership interest in the Project.
- B. The Authority agrees that it shall be unconditionally obligated to purchase 100% of the TWDB's interest in the Project with the Contract Revenues regardless of whether the Authority actually acquires or completes the Project, or whether the Authority actually approves, purchases, receives, accepts, or uses the Project; and such purchase shall not be subject to any abatement, set-off, recoupment, or counterclaim. The TWDB shall be entitled to rely on this Agreement and representation, notwithstanding any provision of this Agreement or any other contract or agreement to the contrary, and regardless of the validity of, or the performance of, the remainder of this Agreement or any other contract or agreement.
- C. The obligations of the Authority under this Agreement shall be a special limited obligation of the Authority, payable from the sources described herein, and shall be enforceable as provided under this Agreement.
- D. The Authority may not pledge to the payment of Additional Obligations a lien on the

Contract Revenues superior to the lien on and pledge of the Contract Revenues securing the obligations of the Authority under this Agreement. The Contract Revenues from the Authority shall not be pledged to the payment of any Additional Obligations of the Authority on parity with the pledge under this Agreement unless:

- (1) the Authority demonstrates to the Executive Administrator's satisfaction that the Contract Revenues will be sufficient for the payment of all Contract Revenue Bonds, the Authority's obligation to purchase the TWDB's interest in the Project, and the Additional Obligations, and
- (2) the Authority delivers to the Executive Administrator an executed certificate that Contract Revenues will be sufficient for the purpose described in clause (1) of this Section.

The governing body of the Authority may not take action to authorize or approve the issuance of Additional Obligations unless it has delivered the certificate described in clause (2) of this Section and received written notification from the Executive Administrator that the Authority has satisfactorily made the demonstration described in clause (1) of this section.

- E. The Authority shall submit annual audits of contracting parties for the Executive Administrator's review.
- F. The Projects Contract is approved, executed, and in effect. The Authority must maintain and enforce the Projects Contract so that revenues paid to the Authority by the City are sufficient to meet the revenue requirements of the Authority's obligation to purchase the TWDB's interest in the Project that are being supported by the pledged Contract Revenues and, prior to beginning operations and maintenance of the Project, must enter into additional contractual obligations with the City, in form and substance acceptable to the TWDB, so that payments from the City are sufficient to pay all of the Authority's revenue obligations arising from the operation and maintenance of the Project. The TWDB reserves the right to compel compliance of this obligation by mandamus or any other appropriate means including those under Texas Water Code § 6.114.
- §3.3 PRICE OF SALE TO AUTHORITY. The TWDB agrees to sell its ownership interest to the Authority at the following price, as established by Texas Water Code § 16.186(b), to-wit: the sum of the TWDB Cost of Acquisition plus an amount of interest calculated by multiplying the lending rate in effect at the Date of Acquisition (and identified on the Schedules) by the amount of the TWDB money disbursed for the acquisition times the number of years and fraction of a year from the date or dates of purchase or acquisition to the date or dates of the sale or transfer of any portion of the TWDB's ownership interest in the Project to the Authority, plus the TWDB's cost, if any, of operating and maintaining the Project from the Date of Acquisition to the date of such purchase by the Authority, less any payments received by the TWDB from the lease of the Project or sale of capacity therefrom.

Pursuant to Texas Water Code § 16.186(c), the Authority shall assume, to the extent disclosed by the TWDB at or prior to the sale, any and all direct, conditional, or contingent liabilities of the TWDB attributed to the Project in direct relation to the percentage of the Project acquired.

For purposes of this section, the dates of sale to the Authority shall be the dates on which the Authority provides payment to the TWDB to acquire part or all of the TWDB's ownership interest in the Project. After all principal and accrued interest under the Schedules have been paid, the Authority's scheduled payments of principal under the Schedules or the Authority's partial purchases of the TWDB's ownership interest made pursuant to § 3.4 or § 3.5 of this Agreement shall constitute the purchase of a proportion of the TWDB's ownership interest, such proportion to be calculated by dividing such principal payment by the TWDB Cost of Acquisition, provided the Authority also pays the same proportion of the TWDB's cost of operating and maintaining the Project to the date of each purchase.

The lending rate in effect at each Date of Acquisition shall be based upon the TWDB's methodology, established by rule, for computing such rates. Interest will accrue on outstanding principal based upon simple interest rate calculation on a basis of a 360-day year consisting of twelve (12) 30-day months.

**§3.4 SCHEDULE OF AUTHORITY PAYMENTS**. The Authority agrees to purchase the TWDB's ownership interest in the Project beginning with the first scheduled principal payment and in accordance with all subsequent scheduled principal payments on the Schedules attached to this Agreement as **Attachment B** and any revisions made thereto pursuant to this Agreement. The Authority shall wire all payments to the TWDB in accordance with the Schedules, without the need for an invoice and at no cost to the TWDB, to the following:

TEXAS COMPT - AUSTIN
ABA# 114900164
BNF = ACCT#463-6005-80
ATTN: TWDB - JOHNNY GREENWOOD (4)

ATTN: TWDB - JOHNNY GREENWOOD (512) 463-6251

The Authority also agrees to make scheduled interest payments prior to the first scheduled principal payments as provided on the Schedules, and any revisions thereto pursuant this Agreement.

In exchange for having a preferential right to purchase the TWDB's ownership interest in the Project, the Authority agrees to pay all deferred interest and accrued interest attributed to the Project prior to the Authority's purchase of any ownership interest.

§3.5 EARLY PURCHASE BY AUTHORITY. The Authority shall have the right, the Schedules notwithstanding, to make an early purchase of all or a portion of the TWDB's ownership interest reflected in the Schedules on or after the Call Date specified in each Schedule by making principal payments in excess of the scheduled principal payments in the Schedules. Such early purchases may be made no more than once a year, unless otherwise allowed by the Executive Administrator. Early purchases under this section by the Authority must be made in minimum increments of \$1,000 principal amounts under any Schedule. Any partial early purchase will be applied in inverse order to the Schedules

#### §3.6 LEASE OR PURCHASE UPON AUTHORITY'S USE OF TWDB OWNERSHIP.

A. **DETERMINATION OF AUTHORITY'S USE OF TWDB OWNERSHIP**. The Authority shall report to the TWDB by March 1 of each year the Authority's actual use of the Project's capacity for each calendar year, beginning upon the TWDB's approval of the final accounting under § 2.5 herein, in the format included herein as **Attachment C**.

This report shall be submitted to:

Texas Water Development Board Attn: Financial Monitoring P.O. Box 13231 Austin, Texas 78711-3231

The Authority shall be considered to be using a portion of the TWDB's ownership interest in the Project when the Authority's transportation of water by the Project exceeds the TWDB's interest shown on Attachment C in acre-feet per year, as required under § 2.5 of this Agreement.

The Authority's transportation of water shall be metered by the Authority at locations acceptable to the Executive Administrator as may be necessary to accurately determine water transported by the Project. The water meters and water meter readings shall be accessible to the TWDB at all times, without notice. A minimum number of water meter readings will be made by the Authority as mutually agreed to by TWDB and the Authority. It shall be the responsibility of the Authority to ensure that such meters are installed prior to transportation of water by the Project and to monitor the accuracy of the meters at a minimum on an annual basis. If at any time the accuracy of the metering equipment is more than two percent (2%) in error, the Authority will, as soon as possible, correct the inaccuracy. Adjustments in the quantity of water measured during the period when the meters were not accurately measuring the quantity of water transported shall be the shorter of six months or the actual period of inaccuracy, if such period can be determined, or reasonably estimated by the authorized representatives of the Authority and the TWDB.

- B. **METHOD OF AUTHORITY'S LEASE OR PURCHASE OF TWDB INTEREST**. In the event the Authority begins using any portion of the TWDB's ownership interest in the Project, either prior to or after any Call Date, the Authority will, at the TWDB's option, either: (1) lease from the TWDB that portion of the TWDB's ownership interest that the Authority is using; (2) upon written approval of the TWDB, issue revenue bonds to the TWDB as consideration to purchase that portion of the TWDB's ownership interest that the Authority is using; or (3) purchase the TWDB's ownership interest with money. The sales price of any of the TWDB's ownership interest under this Section shall be determined in accordance with § 3.3 of this Agreement.
- C. PROVISIONS RELATING TO PURCHASE USING REVENUE BONDS AS CONSIDERATION. If the Authority issues revenue bonds to the TWDB as consideration to purchase all or a part of the TWDB's ownership interest in the Project, the principal amount of the revenue bonds shall be equal to the price for purchasing all or a portion of such ownership interest. The revenue bonds must be non-callable prior to the Call Dates of the Schedules. The interest rates on revenue bonds used by the Authority as consideration for an early purchase of the TWDB's ownership interest will be identical to the lending rates associated with rates on purchase of bonds for water supply projects, as prescribed by Texas Water Code § 17.176. Terms and maturities of such revenue bonds will be subject to TWDB approval at the time of purchase. The revenue bonds may, at

the TWDB's option, either be on parity with, or subordinate to, the outstanding Contract Revenue Bonds.

- D. LEASE PAYMENTS. If the Authority leases all or a portion of the TWDB's ownership interest in the Project, the lease payments will be the proportionate share that the percentage of the Authority's use of the TWDB's ownership interest bears to a lease payment schedule to be determined in accordance with the applicable provisions of Texas Water Code § 16.189 and Article 3 of this Agreement, or the payment amount in the Schedules, whichever is greater. As required by Texas Water Code § 16.189, such lease payment under this Agreement must be calculated to ensure that any such lease payments shall not be less than the proportionate share that the percentage of use bears to the annual principal and interest requirements attributable to the debt incurred by the State of Texas in acquiring its share of the Project, as determined by the TWDB. Lease payments shall be due and payable on each May 15 immediately following the Authority's calculation in which the Authority has used a portion of the TWDB's ownership interest. It is anticipated and agreed that any lease payments would be made with Contract Revenues.
- §3.7 PROJECT SITE REVENUES. In exchange for the Authority's agreement to assume operation and maintenance costs of the Project, revenues derived from leases or other agreements related to the Project lands may be applied to pay costs of operation and maintenance for the Project and/or insuring the TWDB's interest pursuant to § 5.3 of this Agreement, to the extent permitted by law. Any revenues not annually used for such purposes will be deposited into an account of the Authority and applied to pay the costs of operation and maintenance for the Project, insurance costs for the Project, including insuring the TWDB's interest, or utilized as contingency funds for operation and maintenance of the Project. Such revenues will be accounted for in the Authority's annual comprehensive audits and budgets and provided to the TWDB when such comprehensive audits and budgets are provided pursuant to this Agreement.
- §3.8 PREFERENTIAL RIGHT TO LEASE AND PURCHASE. Pursuant to this Agreement, the Authority has a right of first refusal and preferential right to lease the TWDB's undivided ownership interest in the Project, and, subject to the requirements of Texas Water Code § 16.196, the TWDB may not lease its interest in the Project without the Authority's consent, which shall not be unreasonably withheld. Upon an Event of Default, however, the Authority shall lose its preferential right to lease the TWDB's interest in the Project, and the TWDB may lease its interest in the Project without the Authority's consent.

The Authority has a right of first refusal prior to any sale of the board's interest in the project and the TWDB may not sell or transfer its interest in the Project to any other party besides the Authority without the Authority's consent, which shall not be unreasonably withheld. Upon an Event of Default by the Authority, however, the TWDB may sell or transfer its interest in the Project without the Authority's consent, subject to the requirements of Texas Water Code § 16.196.

The sale, transfer, or lease of the TWDB's interest in the Project to any entity other than the Authority would be subject to the requirement that the TWDB obtain the approval of the Attorney General as to the legality of any contract for such sale, transfer, or lease, under Texas Water Code § 16.181.

#### §3.9 PURCHASE AND LEASE SCHEDULES.

- A. **PURCHASES SCHEDULES**. The Authority obligates itself and agrees to purchase the TWDB's ownership interest in the Project as outlined in the attached Schedules, which are incorporated herein for all purposes. Prior to each Date of Acquisition, the Authority shall deliver a Schedule for the Authority's purchase of the TWDB's ownership interest in the Project that will be acquired by the TWDB at such Date of Acquisition. This new Schedule will be appropriately labeled and appended to this Agreement. All Schedules submitted by the Authority for the purchase of the TWDB's ownership interest in the Project are subject to the written approval of the TWDB. In addition, at each purchase of the TWDB's ownership interest by the Authority pursuant to § 3.5 or § 3.6 of this Agreement, the schedule of payments in the Schedules shall be amended to reflect the reduction in the TWDB's ownership interest in the Project.
- B. **LEASES**. The schedule for the Authority's lease payments for the use of the TWDB's ownership interest in the Project will be calculated in accordance with Texas Water Code § 16.189 and the terms of this Agreement. The TWDB and the Authority agree that upon each lease of the TWDB's ownership interest by the Authority pursuant to § 3.6 of this Agreement, and prior to each payment date in the Schedules, the schedule of payments established in the Schedules will be amended to credit each lease payment by the Authority as follows: first to deferred interest, then to current interest and then to principal.
- C. **REVISIONS TO SCHEDULES**. Revisions to Schedules and lease payment schedules, calculated in accordance with Texas Water Code § 16.189 and this Agreement, shall be dated and signed by the Executive Administrator and by a duly authorized representative of the Authority to indicate agreement to the revisions prior to being appended to and incorporated into this Agreement.

#### ARTICLE 4. PROCEDURES DURING PROJECT CONSTRUCTION

- **§4.1 PROJECT SCHEDULE**. The Authority shall proceed with all studies and planning in an expeditious manner, and provide for acquisition, design, construction and operation of the Project on a reasonable schedule.
- **§4.2 AUTHORITY RESPONSIBILITIES**. The Authority shall perform the duties and functions required of it and governing its operations, including such provisions of law as may relate to bidding, awarding of contracts, acquisition of land and improvements and shall provide such personnel as may be necessary to secure and protect the property and facilities as acquired and constructed in connection with the Project.
- **§4.3 SUPERVISION OF CONSTRUCTION**. During the construction of the Project, the Authority shall provide for adequate supervision of the Project to assure that all work covered by this Agreement is performed in a satisfactory manner in accordance with final plans and specifications and approved change orders and in accordance with sound engineering principles and practices.
- §4.4 TWDB INSPECTION. The TWDB or its authorized agent shall have the right to inspect

construction of the Project at any time to assure compliance with the final plans and specifications. The inspections shall not subject the TWDB or the State to any claims or actions for damages.

**§4.5 REPORTS TO BE PROVIDED**. Upon the delivery of any funds by the TWDB, the Authority shall prepare and file with the TWDB quarterly reports on the status of the Project, including the Design and Construction Stages. Reports shall be provided to:

Texas Water Development Board Attn: Construction Assistance P.O. Box 13231 Austin Texas 78711-3231

#### ARTICLE 5. OPERATION AND MAINTENANCE

**§5.1 OPERATION AND MAINTENANCE**. It is understood and agreed by the parties to this Agreement that the Authority will be responsible for the operation and maintenance of the Project and no requirement shall be made of the TWDB to share in this responsibility or in the cost. The Authority shall take whatever measures are reasonable and prudent to insure that the Project is operated safely, efficiently and in accordance with the laws creating and governing it and the general laws of the State. The Authority binds itself to take such action as may be necessary to insure that the Project is adequately maintained and protected, and shall keep in good and operable state of repair the physical properties comprising the Project.

#### §5.2 INDEMNIFICATION.

- A. GENERAL INDEMNIFICATION. To the extent permitted by law, the Authority shall indemnify and hold the TWDB and the State harmless, from any and all losses, damages, liability, or claims therefore, on account of personal injury, death, or property damage of any nature whatsoever caused by the Authority, arising out of the activities and work conducted pursuant to this Agreement. The Authority is solely responsible for liability arising out of its acts or omissions during the performance of this Agreement. In the event insurance coverage may be inadequate to completely indemnify and hold the TWDB harmless and free of all costs or liability for any and all claims for injuries to persons or property, or otherwise resulting from ownership or operation of the Project, then the Authority shall utilize any and all other funds and resources lawfully available as may be required to indemnify and hold the TWDB and the State harmless and free of all costs or liability for any and all such claims.
- B. **ENVIRONMENTAL INDEMNIFICATION**. Proceeds of the TWDB's funds delivered for the TWDB's Cost of Acquisition shall not be used by the Authority to sample, test, remove or dispose of contaminated soils and/or media that may be present at or around the Project site or any sites upon which related facilities are located; nor shall such proceeds be used, either directly or indirectly, to acquire property or to remediate property(s) that contains known, hazardous wastes and hazardous substances. To the extent permitted by law, the Authority agrees to indemnify, hold harmless and protect the TWDB from any and all claims, causes of action or damages, however and whenever arising, to the person or property of third parties caused either directly or indirectly by the

sampling, analysis, transport, storage, treatment, recycling and disposal of any contaminated soil, surface water, groundwater and contaminated media that may be generated or encountered by the Authority, its contractors, consultants, agents, officials and employees as a result of design and construction activities undertaken by the Authority or its contractors, consultants, agents, officials and employees to complete this Project.

- INSURANCE. For so long as the TWDB maintains an ownership interest in the Project, the **§5.3** Authority agrees to maintain insurance in the type and amount that, in the judgment of the Authority and consistent with the standard practices of the Authority and in the industry, is necessary to protect the Authority, the TWDB, and employees and officials of the TWDB from liability arising out of this Agreement and the Project, including but not limited to worker's compensation, property damage, general liability and automobile liability, naming the TWDB as an additional insured, to the extent required to fulfill the requirements of this provision. Typically the Authority maintains single limit coverage limits of \$1,000,000 with excess liability coverage of \$4,000,000. These coverage limits are reviewed by the Authority from time to time and may be adjusted as necessary. The Authority will require all consultants and contractors involved with the project to maintain liability, automobile and workers compensation coverage in amounts necessary to protect the Authority and the TWDB and naming the Authority and TWDB as additional insured. The Authority must provide copies of all insurance policies relating to the TWDB and the State to the TWDB, and such insurance shall be effective at the time the TWDB acquires an ownership interest in the Project. Although the Authority does not currently intend to satisfy these insurance requirements through self-insurance, it may seek to self-insure in the future provided that (a) prior notification is forwarded to the Executive Administrator for approval along with copies of all pertinent insurance-related documentation, and (b) the Executive Administrator issues written approval allowing the Authority to self-insure.
- **§5.4 BUDGETS, AUDITS AND REPORTS**. The Authority shall keep and maintain complete records, accounts and financial statements pertaining to the operation of the Project in accordance with generally accepted accounting principles as adopted by the American Institute of Certified Public Accountants. The Authority shall provide the TWDB with the reports required in this Section and any other report as the TWDB shall from time to time reasonably require. The Authority shall provide the TWDB with a copy of its annual budgets. The annual budget shall reflect Project revenues, maintenance and operation expenses and capital outlays anticipated for the next ensuing year. The Authority agrees to deliver copies of all minutes, monthly operating statements, contracts, leases, deeds, and other documents concerning the Project upon request of the TWDB. The Authority will submit comprehensive annual audits for each fiscal year to the TWDB within 30 days of the completion of such audits. The audits for each fiscal year must be prepared according to the generally accepted auditing standards adopted by the American Institute of Certified Public Accountants within one hundred and eighty (180) days from the end of the Authority's fiscal year. These reports shall be provided to:

Texas Water Development Board Attn: Financial Monitoring P.O. Box 13231 Austin, Texas 78711-3231

**§5.5 RECORDS RETENTION.** Unless otherwise directed by the TWDB, the Authority shall retain all records relating to the provision of services herein for a period of six (6) years following the

termination of this Agreement. At the direction of the TWDB, the Authority shall allow representatives or designees of the State Auditor, Attorney General or TWDB to review and/or audit said records at all reasonable times. At the direction of the TWDB, after the expiration of the records retention period, the Authority shall return all files and records to the Agency. The Authority may destroy all records in whatever media that are not returned at the expiration of the record retention period.

**§5.6 TWDB OPERATION AND MAINTENANCE**. If the Authority fails at any time to operate and maintain the Project as provided in this Article, or in any manner fail to comply with any provisions of this Agreement, the TWDB, in addition to any other legal remedies it may seek, may take over, operate, and maintain the Project, or cause such to be done for the benefit of the TWDB. The TWDB shall give at least sixty (60) days written notice to the Authority of its intent to take over and operate and maintain the Project so as to provide the Authority with the opportunity to remedy the problem(s) identified by the TWDB. The Authority shall remain liable for any expenditures made by the TWDB with respect to notice, remedies, operation and maintenance of the Project.

#### ARTICLE 6. SALE AND LEASE OF PROPERTY BY AUTHORITY

- **§6.1 DISPOSAL AND ENCUMBRANCE OF PROJECT**. During the time that the TWDB owns an undivided interest in the Project, the Authority will not sell, lease, or otherwise dispose of or encumber any part of the Project, except as provided herein.
- **§6.2 LEASE OF AUTHORITY PROPERTY.** Subject to the provisions of § 6.3 of this Agreement, the Authority may lease any of the property that is part of the Project for any purpose, if such lease or the use of such property will not be detrimental to the operation and maintenance of the Project, as determined by the Authority. No lease shall be made which will result in any damage to or substantial diminution of the value of any of the property that is part of Project, or which will in any manner interfere with the Project or divert, endanger or contaminate water that is to be produced or transported by operation of the Project.
- **§6.3 TWDB APPROVAL OF SALES AND LEASES**. Except for short term leases of less than two (2) years, any lease or sale by the Authority of real property in which the TWDB has an interest under this Agreement shall require prior written approval of the TWDB. Nothing contained in this Agreement shall be regarded or construed as creating a lien or encumbrance against the title to lands now or hereafter vested in the Authority insofar as the rights of third parties may be concerned. The Authority, however, hereby covenants not to sell or otherwise relinquish full right to the use of any lands and facilities acquired and necessary for the construction and operation of the Project for as long as the TWDB has an ownership interest in the Project.
- **§6.4 SALE OF CERTAIN ITEMS**. The Authority may from time to time sell any machinery, fixtures, apparatus, tools, instruments, or other movable property and any materials used in connection with the Project if the Authority determines that such articles are no longer needed or are no longer useful in connection with the operation and maintenance of the Project. If the costs of such items were included as Project Costs, then the value received from the sale shall be deducted from total Project Costs.
- **§6.5 COMPLIANCE WITH TAX CODE.** It is the Authority's responsibility to ensure that any sale, lease, or other disposition of Project-related assets and articles complies with the Code and

applicable IRS regulations.

#### ARTICLE 7. EFFECTIVE DATE AND TERM OF AGREEMENT

- **§7.1 EFFECTIVE DATE**. This Agreement shall become effective upon execution by all of the Parties and approval by the State Attorney General as to legality.
- **§7.2 TERM**. This Agreement shall continue in full force and effect until the Authority has satisfied all of its obligations hereunder and all of the TWDB's undivided ownership interest in the Project has been purchased by the Authority.

#### **ARTICLE 8. FURTHER COVENANTS**

**§8.1 NOTICES.** For purposes of providing notifications to the TWDB in accordance with the notification and reporting requirements set forth in this Agreement, the following points of contact are hereby established:

Executive Director Coastal Water Authority Suite 800, 1801 Main Street Houston, Texas 77002 Phone: 713-658-1915

FAX: 713-658-1915

Email: dripley@coastalwaterauthority.org

Executive Administrator Texas Water Development Board 1700 North Congress Avenue Austin, Texas 78701

It is the Authority's burden and responsibility to provide written notification to the Executive Administrator of any material change to the Authority's point of contact.

- **§8.2 PROJECT EXPANSION**. The Authority will submit to TWDB for approval any plan for future expansion of the Project that will commence before the Authority has purchased all of the TWDB's interest in the Project. The TWDB will not unreasonably withhold approval of said plan submitted by the Authority.
- **§8.3 TITLE COVENANTS**. Unless purchased through eminent domain proceedings, the Authority covenants that it will obtain title insurance to the land to be purchased for the Project. The Authority warrants, by executing this Agreement, that any and all title objections referenced by any title insurance commitment policy entered into that may impair the Project will be cured to the reasonable satisfaction of the Executive Administrator. Additionally, if required by the TWDB, the Authority agrees to provide a mortgagee's policy of title insurance for the benefit of the TWDB in the event that the TWDB requires the execution of documents evidencing the TWDB's ownership interest in the Project.
- **§8.4 PLEDGE COVENANTS**. The Authority hereby covenants that it has the lawful power to pledge its Contract Revenues to the TWDB, on a parity lien basis, to the payment of its obligations pursuant to this Agreement in the manner herein contemplated and has lawfully exercised such power under the Authority Act, Texas Water Code § 49.108, and other applicable laws.

#### ARTICLE 9. LAWS GOVERNING THE AGREEMENT; REMEDIES

- **§9.1 RULES AND APPLICATIONS INCORPORATED IN AGREEMENT.** The Authority sought the participation of the TWDB in the Project, as reflected in the Application. The TWDB and the Authority agree that the Application for State Participation funds filed by the Authority, as finally approved by the TWDB, are incorporated herein as a part of this Agreement and the Authority agrees to be bound by the TWDB's rules, the TWDB Resolution, and the representations made in its Application. The Authority represents that there are no material changes in the information contained in its Application and supplemental information submitted to the TWDB.
- **§9.2 APPLICABLE LAW**. It is expressly understood by and between the parties hereto that the provisions of this Agreement are subject to the applicable provisions of the Constitution and laws of the State, and federal laws and regulations. The parties hereto reserve all rights at law and in equity to enforce the performance of this Agreement, and each respectively covenants to exercise all such rights to the extent necessary to perform or cure any default on the part of the respective party.
- **§9.3 REMEDIES**. The TWDB, after providing notice and reasonable opportunity to cure, retains the discretion to pursue any remedy available to it through this Agreement or other law. The Authority agrees that the TWDB shall have available to it the remedies of mandamus and specific performance, even if failure of performance of the Authority could be adequately accomplished or compensated through some other method. The Authority's opportunity to cure shall be no less than 30 days from the date the Authority receives notice from the TWDB, and shall continue as long as the Authority uses good faith and diligence to cure any defect accurately identified by the TWDB. Specific remedies available to the TWDB include, but are not limited to, the TWDB's right to:
  - A. by mandamus, or other suit, action or proceeding at law or in equity, enforce all rights of the TWDB under the Agreement and all rights of the TWDB, at law or in equity, whether or not any non-performance or violation has become an Event of Default, relating to the purchase, ownership, and lease or sale of the Project or the TWDB's interest in the Project, including to the Authority's obligation to purchase the TWDB's interest in the Project under the Agreement. These rights include, but are not limited to, the right to require the Authority to charge and collect moneys adequate to carry out the terms of the Agreement;
  - B. by action or suit in equity require the Authority to account as if it were the trustee of an express trust for the TWDB;
  - C. by action or suit in equity enjoin any acts which may be unlawful or in violation of the rights of the TWDB.
- **§9.4 VENUE**. All amounts due and owing under this Agreement including, but not necessarily limited to, payments or damages for breach of this Agreement, shall be due and payable in Travis County, Texas, the county in which the principal offices of the TWDB are located. Jurisdiction and venue for any action on or related to the terms of this Agreement shall be exclusively in Travis County, Texas.
- **§9.5 AMENDMENT**. This Agreement may be amended by agreement of the TWDB and the Authority in written form. Any such amendment shall be executed in the same manner as this Agreement was originally executed and shall be subject to approval of the State Attorney General

regarding the legality of said amendment and the resolution of the TWDB authorizing the amendment.

- **§9.6 SEVERABILITY**. The TWDB and the Authority specifically agree that in case any one or more of the sections, subsections, provisions, clauses or words in this Agreement or the application of such sections, subsections, provisions, clauses or words to any situation or circumstance should be, or should be held to be, for any reason whatsoever invalid or unconstitutional, or in contravention of any federal, state or local laws, rules and regulations, such invalidity, unconstitutionality, or contravention shall not affect any other sections, subsections, provisions, clauses or words in this Agreement or their application thereto. The parties intend that this Agreement be severable and it shall be construed and applied as if any such invalid or unconstitutional section, subsection, provision, clause or word had not been included herein, and the rights and obligations of the parties hereto shall be construed and remain in force accordingly.
- **§9.7 ENTIRE AGREEMENT**. This Agreement, including the Application(s) for State Participation Funds incorporated by reference herein, constitutes the entire agreement between the parties with respect to the matters described herein.
- **§9.8 ARBITRATION**. It is expressly understood that neither the Authority nor the TWDB shall, without its consent, be obligated to participate in, nor shall it be made a party to, any arbitration proceedings relating in any way to the Project or to any provisions of this Agreement.
- **§9.9 FORCE MAJEURE**. If, by reason of Force Majeure, any Party hereto shall be rendered unable, wholly or in part, to carry out its obligations under this Agreement, then such Party shall give notice and the full particulars of such Force Majeure event in writing to the other Party within a reasonable time after the occurrence of the Force Majeure event. The obligations of the Party giving notice of such Force Majeure event may be suspended during the continuance of the event but for no longer period and any such Party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term "Force Majeure" as employed herein shall mean Acts of God, natural phenomenon, or act of a third party, including but not limited to war, strikes, fires, explosions, governmental prohibition, judicial order or injunction, acts of upstream appropriators, sabotage, terrorism, explosions, and unforeseeable breakage, damage, or blockage to machinery, equipment, pipelines, or canals and other causes that are beyond the reasonable control of the Party claiming the inability to perform.
- **§9.10 SECURITY INTEREST IN CONTRACT REVENUES**. The Parties expressly agree that the TWDB has a perfected security interest under Chapter 1208, Government Code, which provides that no filing, registering, recording or publication of this Agreement is required to establish a pledge of the Contract Revenues or to perfect, protect or maintain the lien created hereby on the Contract Revenues. In the event Chapter 1208, Government Code, is amended at any time while any obligations remain outstanding under this Agreement, such that the lien on the Contract Revenues is to be subject to the filing requirements of Chapter 9, Business & Commerce Code, the Authority agrees to take such action to comply with the applicable provisions of Chapter 9, Business & Commerce Code, to maintain perfection of the lien on and pledge of the Contract Revenues under this Agreement. Notwithstanding the applicability of Chapter 1208, Government Code, the TWDB has the right to further protect its lien created hereby on the Contract Revenues by appropriate filing with the Secretary of State.

#### \*\*\*SIGNATURE PAGES TO FOLLOW\*\*\*

EXECUTED as of this	day of _		, 20
TEXAS WATER DEVELOPMENT BOARD			
Melanie Callahan, Executive Administrator			
ATTEST:			
EXECUTED as of this day of		_, 20	
COASTAL WATER AUTHORITY			
ATTEST:			
APPROVED as to Legality: Greg Abbott, Attorney General			
State of Texas			
By: Assistant Attorney General			

#### ATTACHMENT A

# BOND COUNSEL OPINION REGARDING IMPACT OF THE PROJECT ON THE TAX-EXEMPT STATUS OF TWDB BONDS

# ATTACHMENT B SCHEDULES

#### ATTACHMENT C

#### FORMAT FOR DETERMINATION OF AUTHORITY USE OF TWDB OWNERSHIP

# ATTACHMENT C MASTER AGREEMENT BETWEEN

### TEXAS WATER DEVELOPMENT BOARD AND

#### **COASTAL WATER AUTHORITY**

Determination of Coastal Water Authority's Use of TWDB Ownership Due March 1 Annually per §3.6 of the Agreement

The Authority shall be considered using a portion of TWDB's ownership interest in the Project when the Authority's annual transmission of water from the Project is in excess of Authority's interest in the transmission of the Project's weighted average capacity of 396,350 acre-feet per year (354 MGD) of water, as determined under §2.5 of this Agreement.

Authority's ownership interest in the Project =	acre-feet per year (	% of Project Costs)
TWDB's ownership interest in the Project =	acre-feet per year (	_% of Project Costs)

Year	Annual Usage (acre-feet)	Annual Usage Exceedsacre-feet (Yes/No)	Lease Payment or Purchse Due by May 15 (Yes/No)
2013			
2014			
2015			
2016			
2017			
2018			
2019			
2020			
2021			
2022			
2023			
2024			
2025			
2026			
2027			
2028			
2029			
2030			
2031			
2032			

Completed form to be submitted by March 1 annually to:

Texas Water Development Board Financial Monitoring

P.O. Box 13231

Austin, Texas 78711-3231

#### WATER CONSERVATION REVIEW

**Entity:** Coastal Water Authority

Review date: January 2013 Date of plan: NA

UTILITY PROFILE: based on information in water conservation/utility profile

**Total baseline GPCD:** 

Total water loss (GPCD): NA (of baseline GPCD)

Total water loss (percent): NA NA **Residential GPCD:** 

(of baseline GPCD)

WATER CONSERVATION PLAN: Approvable □ Adopted

5-year total GPCD goal: NA 5-year total water loss goal: NA

10-year total GPCD goal: NA 10-year total water loss goal: NA

WATER LOSS AUDIT: The Authority is a wholesale provider and is not required to submit a water loss audit.

Apparent loss (acre-feet): Real loss (acre-feet): NA

Produced water (acre-feet): NA Total water loss (percent): NA

Year of audit: Connections per mile: NA NA

If < 32 connections per mile, real loss (gallons) per mile per day: NA

(Average real loss for less than 32 connections is 737 gallons)

If >32 connections per mile, real loss (gallons) per connection per day: NA

(Average real loss for greater than 32 connections is 37 gallons)

NA Infrastructure Leakage Index (ILI):

**ADDITIONAL INFORMATION:** 

The Authority operates and/or owns facilities to deliver untreated surface water to municipalities (the cities of Houston, Baytown, and Deer Park) as well as agricultural and industrial customers. The municipalities each have their own water conservation plan on file with TWDB, and have reported annually on the implementation of those plans. TWDB agency review for water supplies and water demands has included projections for the City of Houston and the San Jacinto River Authority, and is dependent upon the City of Houston's water conservation goals. The Authority itself has no direct means of implementing a water conservation plan.

#### STAFF NOTES AND RECOMMENDATIONS:

The Authority should ensure, by contractual agreement, that all of their direct customers develop and implement a water conservation plan and report annually on implementation of that plan.

**Reset Form** 

#### DEFINITIONS

Adopted = a water conservation plan that meets the minimum requirements of the water conservation plan rules and has been formally approved and adopted by the applicant's governing body.

Apparent loss = unauthorized consumption, meter inaccuracy, and billing adjustments and waivers

Approvable = a water conservation plan that substantially meets the minimum requirements of the water conservation plan rules but has not yet been adopted by an applicant's governing body.

GPCD = gallons per capita per day

Infrastructure Leakage Index (ILI) = current annual real loss divided by the unavoidable annual real loss (theoretical minimum real loss); only applies to utilities with more than 5,000 connections, average pressure greater than 35 psi, and a connection density of more than 32 connections per mile; the index is recommended to be less than 3 if water resources are greatly limited and difficult to develop, between 3 and 5 if water resources are adequate to meet long-term needs but water conservation is included in long-term water planning, and between 5 and 8 if water resources are plentiful, reliable and easily extracted. The ILI is recommended as a bench marking tool, but until there is increased data validity of the variables used in the calculation, the ILI should be viewed with care.

NA = not applicable

Produced water = the total amount of water purchased or produced by the utility

Real loss = main breaks and leaks, storage tank overflows, and customer service line breaks and leaks.

Residential GPCD = the amount of water per capita used solely for residential use; ideally includes both single and multi-family customer use

Total baseline GPCD = the amount of all water purchased or produced by the utility divided by service area population divided by 365

Total water loss = the sum of the apparent and real water losses

## Coastal Water Authority, Harris County

